option. As a defense to an action by the bank on this agreement, the customer pleaded the Statute of Frauds. (1911 N. Y. Laws, c. 571, § 4; CONSOL. LAWS, c. 41, § 85.) *Held*, that the plaintiff's demurrer to the answer be sustained. *Equitable Trust Co.* v. *Keene*, 66 N. Y. L. J. 1463 (C. A.).

The court interprets the pleadings as describing a contract for future action, and hence not a sale of any existing thing. Accordingly, it says, the Statute of Frauds is not applicable. But does that follow? The provisions of the statute apply to contracts for the future sale of goods not yet in existence, unless such goods are "to be manufactured by the seller especially for the buyer and are not suitable for sale to others in the ordinary course of the seller's business." See SALES ACT, § 4 (2); 1911 N. Y. LAWS, c. 571, § 4 (2); CONSOL. LAWS, c. 41, § 85 (2). See 1 WILLISTON, CONTRACTS, §§ 506–509, 521. The opinion leaves undiscussed the question whether the agreement contemplated the future sale of a chose in action yet to be created, and, if it did, whether such chose would be within the statutory exception quoted. Doubtless the court found what its language does not make clear: that the contract was not for any sale at any time, but for the mere doing of an act, the payment of money in London. The result seems correct; and it is, moreover, in accord with business practice. Various aspects of this and similar commercial transactions have received learned attention of late. See Osmond K. Fraenkel, "Some Aspects of the Law Relating to Foreign Exchange," 20 COL. L. REV. 832; Harlan F. Stone, "Some Legal Problems Involved in the Transmission of Funds," 21 COL. L. REV. 507; William E. McCurdy, "Commercial Letters of Credit," 35 HARV. L. REV. 539. See also 31 YALE L. J. 416.

TAXATION — TRANSFER TAX — CREATION BY DEED OF REMAINDER VESTING IN POSSESSION AFTER DEATH OF GRANTOR. — A statute taxed transfers "intended to take effect in possession or enjoyment at or after" the death of the transferor. (1909 N. Y. CONSOL. LAWS, c. 62, § 220 (4)). A, reserving a power of revocation, settled the income of a trust fund on B for life, with remainders over. A did not revoke. *Held*, that the transfer is not taxable. *Matter of Cochrane*, 190 N. Y. Supp. 895 (Surr. Ct.).

A, reserving a power of revocation, settled the income of a trust fund on B for life; on B's death the principal to be transferred to A; and in the event of A's prior death, to those persons who would then be his next of kin. A did not revoke and predeceased B. *Held*, that the transfer is not taxable. *Matter of Wing*, 190 N. Y. Supp. 998 (Surr. Ct.).

The holding of both cases that the reservation of a power of revocation does not *ipso facto* render the transfer taxable under the statute is sound. *People* v. *Northern Trust Co.*, 289 Ill. 475, 124 N. E. 662; *Matter of Masury*, 28 App. Div. 580, 51 N. Y. Supp. 331, aff'd, 159 N. Y. 532, 53 N. E. 1127. *Cf. Matter of Bostwick*, 160 N. Y. 489, 55 N. E. 208; *Matter of Miller*, 109 Misc. 267, 178 N. Y. Supp. 554. The result of the second case, however, seems untenable. It is not clear whether the next of kin were to be determined at the death of the donor or at the time of the distribution of the fund. (1) If the former, the property goes as by intestacy, and the transfer should be held taxable. (2) If the latter, it is submitted that it is, on authority, taxable. The mere fact that a gift *inter vivos* will, in the ordinary course of events, take effect after the donor's death does not make it taxable. *In re Bell's Estate*, 150 Iowa, 725, 130 N. W. 798. But a transfer is taxable which by the terms of the deed must necessarily take effect at the donor's death; as where the donor reserves to himself a life estate. *In re Murphy's Estate*, 182 Cal. 740, 190 Pac. 46; *Matter of Brandreth*, 169 N. Y. 437, 62 N. E. 563; *Lines's Estate*, 155 Pa. St. 378, 26 Atl. 728. This result has been reached even though the person who is to take the *corpus* of the gift at the death of the donor is given the enjoyment of the income meanwhile. *State Street Trust Co.* v. *Treasurer*

& Receiver General, 209 Mass. 373, 95 N. E. 851; *Matter of Cruger*, 54 App. Div. 405, 66 N. Y. Supp. 636, aff'd, 166 N. Y. 602, 59 N. E. 1121. It may be argued that the construction of the statute in the last-cited cases was unsound. See *Matter of Keeney*, 194 N. Y. 281, 286–287, 87 N. E. 428, 429. But if these cases are to be followed, *Matter of Wing* seems wrong, for it is obviously immaterial, under the statute, whether the gift by its terms takes effect "at" or "after" the donor's death.

TRUSTS — CONSTRUCTIVE TRUST — RIGHT OF ASSIGNEE OF FRAUDULENT GRANTEE, WITH NOTICE, TO EQUITABLE RELIEF. — The plaintiff took an assignment of E's rights as entryman upon public lands, with knowledge of E's fraud in obtaining those rights. The government not having set aside the entry during the statutory two-year period, nor contested it judicially thereafter, the plaintiff asserts his legal right to a patent, giving him title (1918 U. S. COMP. STAT. § 5113), and seeks to have a constructive trust imposed upon the defendant, to whom in the meantime the patent had been improperly issued. The latter resists on the ground that the plaintiff does not come into equity with clean hands. *Held*, that the trust be imposed, and that the defendant convey to the plaintiff. *Everett* v. *Wallin*, 184 N. W. 958 (Minn.).

For a discussion of the principles involved, see NOTES, *supra*, p. 754.

BOOK REVIEWS

OUTLINES OF HISTORICAL JURISPRUDENCE. By Sir Paul Vinogradoff. Volume I. Introduction: Tribal Law. New York: Oxford University Press. 1920. pp. ix, 428.

Historical jurisprudence is a creature of the nineteenth century, which in law as in everything else is the "century of history." In the eighteenth century all writing and thinking about law presupposed philosophy. In the nineteenth century, more and more they came to rest on history, until the historical school became dominant in jurisprudence almost everywhere. Moreover the legal history of the last century had a different purpose from that of the past. The sketch of Roman legal history by Pomponius in the Digest is no more than a preface to a dogmatic outline of the law. The preface with which Gaius begins his exposition of the Twelve Tables expressly justifies a preliminary historical survey on rhetorical and philosophical grounds. Rhetorically an exordium was demanded. Philosophically the ideal exposition must include history because a thing is perfect only when complete in all its parts and the beginning is an essential part. The legal history of Cujas was a Humanist reconstruction of classical antiquity, not an attempt to find universal principles or even general principles by means of history and make them the basis of a theory of the nature or the authority or the development of law. The historical research of Conring sought only the negative result of removing the basis of authority on which law had rested, in order that it might rest for the future upon a philosophical foundation. English writing of legal history before the nineteenth century had the immediate practical purpose of demonstrating the immemorial antiquity of the common law as the custom of Englishmen and thus setting up a basis of authority for the legal order. Fortescue sought to show that England had been governed by the same customs since pre-Roman Britain. Coke sought to make out the case of the common-law courts against the Stuart kings by finding the immemorial common-law rights of Englishmen, merely declared by Magna Charta, by a long succession of statutes, and by a long and continuous succession of judicial decisions. Hale also begins with the propo-